IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

CIVIL APPLICATION NO. 6097 OF 2006
IN
MISC. CIVIL APPLICATION (REVIEW) ST. NO. 14610 OF 2006
IN
WRIT PETITION NO. 1138 OF 2005

1. Vishwanath s/o Chandrikaprasad Gupta

2. Smt. Premlata w/o Vishwanath Gupta

3. Niraj s/o Vishwanath Gupta.

4. Jagdish s/o Vishwanath Gupta

(through Vishwanath Chandrikaprasad Gupta for self and as a Power of Attorney Holder for petitioners No. 2 to 4).

All residents of Plot No.6, Rajnagar, Katol Road, Nagpur. ... APPLICANTS

Versus

1. Additional Commissioner, Nagpur Division, Nagpur.

2. The District Collector, Nagpur.

3. The Tahsildar, Hingna, District – Nagpur. ... RESPONDENTS

Shri Anand Parchure, Advocate for the applicants.
Shri T.R. Kankale, AGP for the respondents.

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CORAM : B.P. DHARMADHIKARI, J.
DATE OF RESERVING THE ORDER : MARCH 28, 2007.
DATE OF PRONOUNCING THE ORDER : APRIL 06, 2007

JUDGMENT :

1. Writ Petition No.1138 of 2005 filed by Review Applicants/original Petitioners challenging the order dated 21/2/2005 in review passed by the Additional Commissioner, Nagpur, and the order dated 18/1/2005 passed by the same authority in Revision Appeal against the order dated 30/6/2004 passed by the Additional Collector has been dismissed by me in motion after hearing both sides by speaking order on 27/1/2006. Said order came to be challenged in Letters Patent Appeal No. 47/2006 by Petitioners and Hon'ble Division Bench has on 4/9/2006 while permitting to withdraw it, granted them liberty to move Single Judge again in review according to law, if otherwise permitted in law. The interim order which was granted by me on 30/1/2006 was continued by Hon'ble Division Bench. MCA Stamp No. 14610/2006 is accordingly filed for Review while C.A. No. 6097 of 2006 is filed seeking condonation of delay of 204 days. Division Bench granted

liberty on 4/9/2006 and these proceedings are filed on 18/9/2006. L.P.A. filed was within time. In the circumstances delay is condoned and C.A. No. 6097 of 2006 is granted. Office to register M.C.A. After hearing Advocate Parchure for Applicants and learned AGP Shri Kankale for Respondents on application for condonation of delay, I have heard them on merits of Review also on various dates.

2. Advocate Parchure has based his arguments for review on following four issues: -- 1) There is no report about identification of spot at which excavation was carried for extracting miner mineral or determining its quantity. It is argued that alleged spot inspection has not been carried in presence of Petitioners by officers of Geological Survey Of India. 2) Collector had permitted Petitioners to level their layout while granting non-agricultural use permission. 3) No permission is required for excavating on one's own land and 4) Royalty passes produced by Petitioners for miner mineral purchased by them from open market are overlooked by all authorities. It is contended that Respondents were duty bound to abide by principles of natural justice and lacunae

narrated above show failure on their part to follow this procedure and as this Court has not considered all these aspects while passing order on 27/1/2006, there is an error apparent which needs to be corrected.

3. Learned AGP Kankale, on the other hand, has contended that Review is not at all maintainable and application as filed is misconceived. He has invited attention to various judgments to point out the scope of Review jurisdiction in such matters. It is contended that order passed on 27/1/2006 was unsuccessfully challenged in L.P.A. & Hon'ble Division Bench has not permitted filing of review and this Court can entertain review only if it is legally maintainable. It is contended that grounds not pressed into service on 27/1/2006 cannot be allowed to be taken in review and Applicants are trying to have second hearing in the guise of review. Attention has been invited to earlier order dated 27/1/2006 and also to original records of case with AGP to state that reasonable opportunity has been given to Applicants and this Court cannot sit in Appeal over its own finding in this respect. On merits, learned AGP has

relied upon records with him to point out how findings reached on 27/1/2006 are borne out from it and has relied upon judgment reported at 1985 Mh. L.R. 197 delivered by learned Single Judge of Gujarat High Court in the case of M/s. Steel Pile & Fabrication Works vs State of Gujarat and others to state that permission is required even to excavate miner mineral from one's own land.

4. Contentions earlier raised on behalf of Applicants are reproduced by me in paragraph 1 of order dated 27/1/2006. It is not argued that some other point was also raised and this Court has not considered said argument. Subsequent paragraph of order reveals reply arguments of learned AGP. The grievance about forcible signature made by Applicants was inquired into by putting relevant questions to their advocate and said defence was not accepted. Similarly grievance about report of surveyor was also found to be misconceived as Applicants could not point out as to when they first made grievance about surveyor not visiting the site. The fact of receipt of report of Geological Survey on 20/10/2003 is also considered and it has also

been noticed that on 22/10/2003 itself they applied for certified copies and certified copies were received by them on 30/10/2003. Perusal of Review Application Stamp No. 14610 of 2006 also shows that Applicants have not made grievance about any specific or particular point raised during arguments on 27/1/2006 stating that it has not been considered in the order sought to be reviewed. On the contrary it is stated that these issues were not appropriately placed before this Court and Hon'ble Division Bench has permitted the same to be raised. I do not find any such liberty given by Hon'ble Division Bench. It is further pleaded that questions relating to holding of appropriate inquiry to identify spot of excavation or consideration of open market purchases effected by Petitioners/Applicants has not been properly considered by this Court. Facts above clearly disclose that all grounds which were argued are considered by this Court while passing order on 27/1/2006.

5. Powers of Administrative Tribunal to review are considered by Hon'ble Apex Court in AIR 2000 SC 85, "Ajit Kumar Rath v. State of Orissa" and I find that these

observations relied upon by learned AGP are apt even in present circumstances: --

> "30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under S. 114 read with O. 47, C. P. C. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47, Rule 1 means a reason sufficiently analogous to those specified in the rule.
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> 31. Any other attempt, except an attempt to

> correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

Other judgments of Hon'ble Apex Court on which learned AGP has placed reliance can briefly be considered now. In case of Jain Studios Ltd vs Shin Satellite Public Co. Ltd. reported at 2006 (5) SCC 501, in paragraph 11 it has been observed that once the prayer is refused, review petition to have re-hearing of original matter is not maintainable and power of review cannot be confused with appellate power. Repetition of old and overruled argument has been held to be not sufficient to reopen concluded adjudication. Power of Review is to be exercised only in exceptional circumstances. In Kerala State Electricity Board vs Hi-tech Electrothermics and Hydropower Ltd. reported at 2005 (6) SCC 651, it has been held that it is not open to Court to re-appreciate its earlier application of mind and to reach a different conclusion even if that is possible. Hon'ble Apex Court has held that such reappreciation is not to be undertaken unless and until it is shown that there is an error

apparent on the face of record or for some reason akin thereto. There are no such arguments advanced by Applicants before me in present matter. In judgment reported at 2004 (5) SCC 222 between Common Cause vs Union Of India and Others, Hon'ble Apex Court has clarified that an application in substance for review of judgment disguised as application for clarification to avoid procedure governing the review petition must not be entertained. It is further clarified that a point not argued is deemed to have been given up and cannot be permitted to be raised by filing such petition. Facts of case at hand are similar and Applicants/Petitioners cannot seek to supplement their earlier arguments or try to raise new grounds by filing such review. There cannot be any second hearing in present circumstances. Similarly, in 2005 (12) SCC 347 in case of State of Kerala & Others vs P. T. Thomas, Hon'ble Apex Court has held that issue which was not raised in main writ petition cannot be gone into while considering review petition.

6. Case law above and facts of present matter

clearly reveal that Applicants/Petitioners have not made out any case for entertaining Review. The same is, therefore, liable to be dismissed and is accordingly dismissed with costs.

JUDGE

7. At this stage, Shri Parchure, learned counsel for the applicant seeks continuation of interim orders for a further period of four weeks on same terms and conditions. The learned AGP opposes the request. However, in the interest of justice, interim orders operating till today are further continued for a period of four weeks from today subject to same terms and conditions and shall cease to operate thereafter automatically.

JUDGE

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